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73-16

In the

Supreme Court of the United States

October Term, 1972

CHARLES H. MOGULNICKI

Petitioner.

VS

TROOPER ROBERT KELLER
AND
SERGEANT MORTON DENNERSTEIN
Criminal Intelligence Division
STATE OF CONNECTICUT

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

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TABLE OF CONTENTS

PAGE

Opinion 1

Jurisdiction 2

Principal Issues 2

Statement of the Case 3-4

Reason for Granting Writ 4

Conclusion 4

CASE AUTHORITIES

Article 4 of the Bill of Rights 5

Henry v United States, Supra 361 U.S. at 103. 5

State of Connecticut v Mogulnicki (1970) 270 2d 364. 5

CONTENTS OF APPENDIX

Ruling of the United States District Court, District of Connecticut. .....,..1a

Ruling of the United States Court of Appeals for the Second Circuit. 1a

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To the Chief Justice and Associate Justices of the United States Supreme Court.

The Petitioner, Charles H. Mogulnicki, prays that this court, issue a Writ to review the judgment of the United States District Court, District of Connecticut, and the judgment of the United States Court of Appeals for the Second Circuit, in the above case.

OPINION BELOW

The opinion below is reported at Civil No. 14,788 and 73-1406 and is printed in the Appendix to this petition, for Summary Judgment and Judgment.

JURISDICTION

The judgment of the court below was entered on January 16,1973. A timely appeal to the United States Court of Appeals for the second circuit was filed, the judgment was dismissed on April 10,1973. The jurisdiction of this court is invoked under the Fourth and Fourteenth Amendments to the United States Constitution.

PRINCIPAL ISSUES

1. Whether the United States District Court, abused its discretion in dismissing and denying the plaintiffs motion for Summary Judgment and Judgment as a matter of law and granting the defendants, cross motion for summary judgment on the defence of statute of limitation.

2. Whether the United States District Courts, dismissal and denial of the plaintiffs motion for summary judgment and judgment as a matter of law, was made with prejudice.

3. Whether the United States Court of Appeals, dismissal of the appellants appeal from the United States District Court, as a matter of law, was made with prejudice.

4. Whether the defenses raised by the defendants were proper basis for the United States District Court and the United States Court of Appeals, to shun the mandate of the United States Constitution, denying the plaintiff, his rights under the 4th and 14th Amendments to the Constitution.

STATEMENT OF THE CASE

On December 4,1967 Trooper Robert Keller and Sgt. Morton Dennerstein, of the criminal intelligence, State of Connecticut, made a warrantless arrest and conducted a warrantless search and seizure of the petitioners person at his place of employment, Standard Knapp, Division of Emhart, Main Street, Portland, Connecticut. Charged the petitioner with the crime of "pool selling" a misdemeaner under Section 53-295 of the Connecticut General Statutes and seized the sum of $705.00 from a wallet on his person.

A motion to dismiss the information against the petitioner, on the grounds that the warrantless arrest and warrantless search and seizure of the $705.00 from the petitioners person was in violation of the Statutes of the State of Connecticut and of Section 7-9 of Article First of the Connecticut Constitution of 1965 and of Amendments 4 and 14 of the Constitution of the United States, was denied by Judge Angelo G. Santaniello, on July 5,1968.

On July 11,1968 the petitioner, was brought to trial and was convicted before a jury and judge Eli Cramer, in the 9th Circuit Court of Connecticut, receiving a sentence of one year in jail, suspended after (60) days and a $200.00 fine. The money seized from the petitioners person, the slips of papers with horses names on them, that were never in the possession of the petitioner, scooped up between 5 or 6 persons at the tool-makers bench, the "Sports Eye" newspaper taken from the petitioners tool-box, this evidence seized after the arrest of the petitioner, was introduced to the court without an objection.

On January 9,1970 the appellant division of the Connecticut State Court, found no error in the conviction of the petitioner.

This court did not pass upone the Constitutionality of the petitioners arrest. The Connecticut Supreme court, denied the petitioner his petition for Certification.

On December 16,1970 the petitioner was put in detention by the State of Connecticut, at the Hartford State Jail to serve a (60) day sentence, on Feb.16,1971 the petitioner served his entire sentence and upon his release, paid the State of Connecticut, the fine.

On March 15,1971 the petitioner, filed a suit for damages for $250,000.00 dollars upon the defendants, because of an Illegal arrest and Illegal search and seizure.

On March 3,1972 the petitioner, filed a motion for trial by jury in the above case. The motion was denied by the United States District Court.

On May 25,1972 the plaintiff, filed a request for admission of facts upon the defendants in the above entitled case. The defendant's in response to the request for admission, admit the allegations in the complaint. (Exhibit D)

REASON FOR GRANTING WRIT

Two reasons are presented. (1) That the petitioner was denied, due process and equal protection under the law, because the arresting officers, conducted a warrantless search and seizure of the petitioners person. (2) That the petitioner was denied due process and equal protection under the law, because the arresting officers failed to obtain an arrest warrant.

CONCLUSION

For the reasons giving it is respectfully submitted that the ruling of the United States District Court, and the United States Court of Appeals, should be reversed as a matter of law.

CASE AUTHORITIES

ARTICLE 4 of the Bill of Rights, provides.

" The right of people to be secure in there persons, houses, papers and effects against unreasonable searches and seizure, shall not be violated and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particilarly describing the place to be searched, and the persons or things to be seized."

Henry v United States, Supra 361 U.S. at 103.

The Fourth Amendment specifically interdicts the court from considering evidence seized after the arrest in determing the validity of the arrest.

State of Conn. v Mogulnicki, (1970) 270 2d 364.

The results of a search and seizure cannot be used to sustain a finding of probable cause for arrest.

Connecticut General Statute. Section 52-595 Fraudulent concealment of cause of action.

If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable there for at the time when the person entited to sue there on first discovers of its existence.

Charles H. Mogulnicki

Pro-Se Attorney for Petitioner

APPENDIX

CHARLES H. MOGULNICKI

VS

TROOPER ROBERT KELLER
and
SERGEANT MORTON DENNERSTEIN
Criminal Intelligence
State of Connecticut

CIVIL NO. 14,788

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANUARY 16, 1973.

Honorable: T. Emmet Clarie, Judge.

RULING ON CROSS-MOTION
FOR SUMMARY JUDGMENT

The plaintiff, Charles H. Mogulnicki, appearing Pro-Se has moved for summary judgment pursuant to Rule 56, Fed. R. Civil. P. and the defendants Trooper Robert Keller and Sgt. Morton Dennerstein of the criminal intelligence, State of Connecticut, filed a cross-motion for summary judgment. The plaintiff, filed this complaint in Court on March 15,1971, against the defendant's seeking compensatory and punitive damages in the amount of $250,000.00 alleging that the named defendants, subjected the plaintiff to an illegal arrest,and an illegal search and seizure in violation of his rights under the fourth and fourteenth Amend - ments to the United States Constitution.

The essence of the plaintiff's complaint is that his arrest and subsequent seizure from him of the $705.00 was illegal, because no search warrant was issued.

The defendant's, on the other hand, have raised two affirmative defenses, each of which operates as a bar to the present action. (1) Collateral estoppel and res adjudicata, and (2) the statute of limitations.

There is no question but that the question of probable cause for the plaintiff arrest was put in issue in the State Courts and determined adversely to him.

Accordingly, the plaintiff's motion for summary judgment is denied. The defendant's Cross-motion for summary judgment is granted.

CIVIL NO.73-1406

UNITED STATES COURT OF APPEALS
SECOND.CIRCUIT

APRIL 10,1973

RULING ON APPELLANT'S APPEAL FOR SUMMARY JUDGMENT AND JUDGMENT.

It is hereby ordered that upon consideration of the motion made herein by counsel for the Appellees, by notice of motion dated March 23,1973, to dismiss the appeal from the United States District Court for the District of Connecticut, for lack of prosecution or, in the alternative, to direct the appellant to post a bond for cost in the minimum of $250 dollars, pursuant to Rule 8 Fed. R. of Appellate Procedure, that the motion to dismiss be and is hereby is granted.

Before: Hon. J. Joseph Smith, Hon. Paul R. Hays, Hon. William H. Timbers. Judges.